

Exhibit BB

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

**STEPHANIE CAPSOLAS, HERNAN RICARDO
ALVARADO, JEFFREY CUTAIAR, NICOLE
MEDVITZ, PAUL TORO, DANIEL JANSON,
ROGER CARO, CHRIS ELL, CHRIS FORBES,
JESSE PATRICK, and DIANA DIETRICH, on behalf
of themselves and other similarly situated,**

Plaintiffs,

v.

**PASTA RESOURCES INC., BABBO LLC d/b/a
BABBO RISTORANTE ENOTECA, PANE SARDO
LLC d/b/a OTTO ENOTECA PIZZERIA, EL MONO
LLC d/b/a CASA MONO and BAR JAMON, LA
LOGGIA LLC d/b/a TARRY LODGE, MARIO
BATALI, and JOSEPH BASTIANICH,**

Defendants.

**DECLARATION OF
ROGER CARO**

I, Roger Caro, declare, upon personal knowledge and under penalty of perjury, pursuant to 28 U.S.C. Section 1746, that the following is true and correct:

1. I worked for Tarry Lodge from approximately September 2008 through the present. For most of the time, I was a server. For a short period of time, roughly two months, I was employed as a manager.

2. During my entire tenure as a server at Tarry Lodge, I was paid hourly wages of less than the full minimum wage rate.

NOTICE OF THE TIP CREDIT

3. Throughout my employment, nobody at Tarry Lodge ever informed me about the federal law regarding the tip credit at any time during my employment. Nobody at Tarry Lodge ever told me that I would be paid less than the minimum wage because I would receive tips or

that my tips would be used as a credit against the minimum wage that Tarry Lodge was required to pay me.

TIP SHARING

4. During my employment at Tarry Lodge, I was not allowed to retain all of the tips that I earned.

5. The restaurant kept a portion of the customer tips that I and other tipped food service workers earned. The amount that the restaurant kept was equal to approximately 4% of the wine sales for the shift.

6. Specifically, the restaurant calculated 4% of the wine sales attributable to each bartender and/or server, and took that percentage out of each bartender/server's tips. With the remainder, we in turn, tipped out a percentage of our tips to other employees, such as barbacks, runners, and busser.

7. I know this because I saw the tip sheet, which showed this distribution. I have attached as exhibit A a copy of the tip-out sheet, which shows that (a) 4% of each waiters' wine sales was deducted from his/her tips earned that shift, (b) of the remainder, 45% was distributed to a "pool" of employees other than servers, and (c) the remaining 55% was kept by the servers. Thus all appropriate service employees, the waiters, and the other service employees in the pool, received less tips as a result of the 4% deduction.

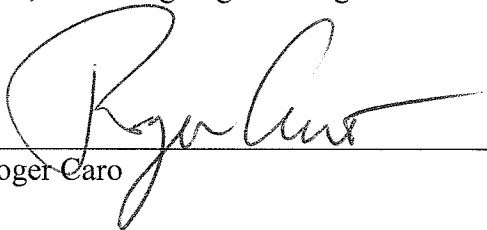
8. As a manager, I had access to the company's payroll records. The company's payroll records indicate that sommeliers Chase (last name unknown), Meng (last name unknown) and Julia Blandori were always paid the same amount of money each week, regardless of the amount of money withheld on account of the wine sales. Further, the sommeliers received paid

vacation and were paid the same weekly amount for vacation weeks. Accordingly, the 4% of wine sales withheld from our tips are not distributed to sommeliers.

9. In fact, Chase once showed me his paystub. Tarry Lodge apparently tried to conceal his fixed salary by breaking up his pay on the payroll records as hourly pay plus tips (see attached Exhibit A). However, the stubs confirmed what I already knew, that Chase was paid the exact same amount each week.

10. At a staff meeting, Nancy Selzer, partner/owner, upon inquiry from the staff, refused to justify the 4% withholding. She simply stated, "It's not going to change."

Dated: New York, New York
August 31, 2010



Roger Caro

EXHIBIT A

SERVERS	CHARGE TIPS	CASH TIPS	WINE SALES	LIQUOR SALES	4% 4% of Wine Sales (calc'd)	4% 4% of LIQ Sales (calc'd)
Andrad, Camila	\$ 128.65	\$ 45.00	\$ 196.00	\$ 3.50	\$ 7.84	\$ 0.14
Aviles, Marc	\$ 299.89	\$ -	\$ 384.00	\$ 47.00	\$ 15.36	\$ 1.88
Bertocchi, Alina	\$ 196.40	\$ 15.00	\$ 261.00	\$ 86.00	\$ 10.44	\$ 3.44
Caro, Roger					\$ -	\$ -
Castro, Cesar					\$ -	\$ -
Castro, Miguel					\$ -	\$ -
DeVito, Michael					\$ -	\$ -
Fischer, Cecilia					\$ -	\$ -
Hernandez, Fabian					\$ -	\$ -
Jansen, Daniel	\$ 374.11	\$ -	\$ 600.00	\$ 122.00	\$ 24.00	\$ 4.88
Nasto, Henri	\$ 445.71	\$ -	\$ 807.00	\$ 126.00	\$ 32.28	\$ 5.04
Pinto, Alara	\$ 407.50	\$ 40.00	\$ 702.00	\$ 125.00	\$ 28.08	\$ 5.00
Porzio, Jenn	\$ 195.62	\$ 48.00	\$ 283.00	\$ 25.50	\$ 11.32	\$ 1.02
Thomas Jr, Tuli					\$ -	\$ -
Vitte, Boris					\$ -	\$ -
Miceli, Christie					\$ -	\$ -
Flower, Louis					\$ -	\$ -
Miranda, Daniel					\$ -	\$ -
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TOTAL	\$ 2,047.88	\$ 148.00	\$ 3,233.00	\$ 535.00	\$ 129.32	\$ 21.40

	CHARGE TIPS	CASH TIPS	WINE SALES	TIP OUT		For "Pool"
				4%		25%
BARTENDERS				4% of Wine Sales (calc'd)	Total Tips	Tip Payout
POOLED AMOUNT FOR SHIFT	\$ 116.00	\$ 15.00	\$ 415.00	\$ 16.60	\$ 114.40	\$ 28.60
DeVito, Michael	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Pruitt, Morgan	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

Bartender "Keeps"					"House Owes You"	
75%						
Tip Retention	TIP IN LIQ Sales From DR	Total Adjusted Tips	PARTY	Cash Tip (Back out)	(Total Tips Retained - Cash taken)	
\$ 85.80	\$ 21.40	\$ 107.20		\$ 15.00	\$ 92.20	Active "1" = YES
\$ -	\$ -	\$ -		\$ -	\$ -	
\$ -	\$ -	\$ -		\$ -	\$ -	